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May 17, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 93-107  
Channel 280A  
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against ASF."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 17 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction  
Permit for a New FM Station,  
Channel 280A, Westerville,  
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: Administrative Law Judge  
Walter C. Miller

MOTION TO ENLARGE ISSUES AGAINST ASF

Respectfully submitted,

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May 17, 1993

B:SEARCY52.FCC

### MOTION TO ENLARGE ISSUES AGAINST ASF

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against ASF Broadcasting Co. ("ASF"). This motion is based on information in the application of ASF and other pre-designation matters and thus is timely filed within thirty (30) days of the release of the hearing designation order on April 15, 1993. See, DA 93-423. In support of its motion to enlarge the issues, ORA submits the following comments.

#### Section 73.316 Violation

The application of ASF, as amended on March 5, 1992, proposes the use of a directional antenna. See, attachment 1. Section 73.316 (c) of the Rules requires that all FM applications proposing the use of a directional antenna must include certain information or data. See also, FCC Form 301, Section V-B, page 3, Question 10. Section 73.316 (c)(1) requires a complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. This sub-section specifically states that it is not sufficient to label the proposed antenna with a generic term and that a specific model number must be provided. In the case of custom designed antennas, a full description of the antenna design must be submitted.

ASF fails to comply with this specific and unambiguous requirement. In its application, at Exhibit E-4, it references only a generic type of antenna. This failure to comply with the requirements of Section 73.316 requires the specification of a hearing issue. Sub-section (c)(1) requests information essential for the Commission staff to properly analyze and process a directional antenna application. This is critical data. The staff must know what specific type and model of antenna will be used in order to determine whether the applicant's proposed directional pattern will correspond with that specific antenna's predicted output and performance.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether the application of ASF Broadcasting Corp. violates Section 73.316 of the Commission's Rules, and if so whether it is basically qualified to be a Commission licensee, and thus whether its application should be granted?

If this issue is specified, ORA requests that the following documents be produced: (1) all correspondence between ASF, its engineer, and other persons with respect to the use of a directional antenna; (2) all work papers created by ASF's engineer in preparing the directional antenna portion of its application.

#### Short-Spacing Issue

The application of ASF indicates that its proposed tower site is 6.84 km. short-spaced, under Section 73.207, to Station WTTF-FM, Tiffin, Ohio. Under long-established Commission policy, when an applicant in a comparative hearing is short-spaced, a hearing issue must be specified as to that applicant's basic qualifications. Jemez Mountain Broadcasters, 7 FCC Rcd 4219, 4220, paras. 2 and 12 (1992); Payne Communications, Inc., 1 FCC Rcd 1052, 1053, paras. 6, 9-10 (Rev. Bd. 1986), aff'd, Evergreen Broadcasting Co., 6 FCC Rcd 5599, 5605, n. 3 (1991); Naguabo Broadcasting Co., 6 FCC Rcd 4879, para. 5 (1991); Madalina Broadcasting, Inc., 6 FCC Rcd 2508, 2509, paras. 3-5 (MMB 1991); Valley Radio, 5 FCC Rcd 4875, 4876, para. 5 (MMB 1990); Donavan Burke, 104 FCC2d 843 (1986); Megamedia, 67 FCC2d 1527 (1978); Clearlake Broadcasting Co., 47 Fed. Reg. 47931 (1982); and North Texas Media, Inc. v. FCC, 778 F.2d 28, 34 (D.C. Cir. 1985) (all of the cited cases will hereinafter be referred to as the "North Texas" policy or line of cases).

ORA is not filing a pleading repetitious of its April 22, 1993, motion to certify. That motion addressed dismissing any short-spaced applicants from the hearing. This motion addresses the specification of basic qualifying issues against any short-spaced applicants, which is a different matter. Indeed, the Memorandum Opinion and Order, FCC 93M-224, at para. 11, and n. 3, released May 4, 1993, indicated that a motion to enlarge the issues might be an appropriate means to pursue a short-spacing issue.

This motion is also based on On the Beach Broadcasting, FCC 93-211, which is a Commission decision released on May 10, 1993, and thus a new matter warranting consideration. Therein, at n. 1, the Commission reaffirmed that North Texas Media, Inc. v. FCC, is still binding precedent. Moreover, a short-spaced

applicant in that proceeding attempted to make the same argument, as has ASF, that the use of a directional antenna renders Section 73.207 a nullity and thus there is no need to demonstrate that a fully-spaced tower site is unavailable. However, the Commission did not accept that argument and required a showing of no available fully-spaced sites. On the Beach Broadcasting, paras. 8 and 11.

ASF fails to acknowledge that the use of Section 73.215 to employ a directional antenna is merely a standardized procedure to obtain a waiver of the spacing requirements of Section 73.207. See, MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991). Section 73.215 does not in any way eviscerate the spacing requirements of Section 73.207, or the necessity to show the unavailability of fully-spaced sites. See, para. 27, supra, where the Commission explicitly states that a short-spaced tower site can be used only when the unavailability of fully-spaced sites are demonstrated. Moreover, Section 73.215 states that a public interest showing must be made in order to obtain a grant under its provisions.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether the application of ASF Broadcasting Corp. proposes a tower site in violation of Section 73.207 of the Commission's Rules, and if so whether the use of a directional antenna pursuant to Section 73.215 of the Rules would be in the public interest and whether it is basically qualified to be a Commission licensee, and thus whether its application should be granted?

If the issue is specified, ORA requests the production of all documents indicating the efforts of ASF to locate a fully-spaced tower site.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issues be specified against ASF.

Respectfully submitted,

McNAIR & SANFORD. P.A.

Attachment 1

EXHIBIT E-4

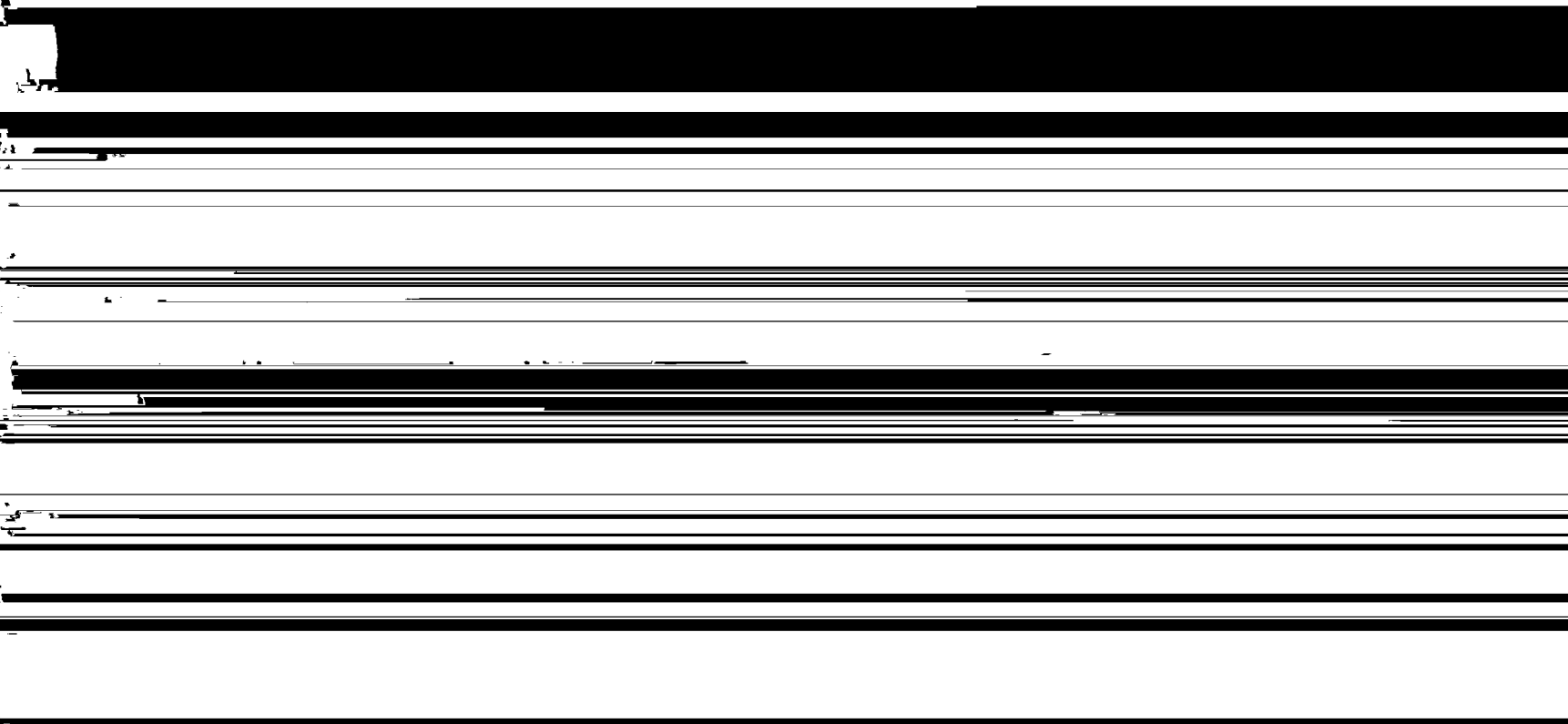
COMPLIANCE WITH 47 C.F.R. Sec. 73.316(c)(5)(6)(7)(8)

The antenna proposed in this application will be mounted in accordance with specific instructions provided by the antenna manufacturer. The antenna will be tested by the manufacturer using the type of mounting which will be employed in the field.

No other antennae of any type are or will be mounted on the same tower level as the directional antenna.

No antenna of any type is or will be mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

Upon completion of antenna construction, a statement from a licensed surveyor will be submitted with the application for license. This statement will certify that the antenna has been installed pursuant to the manufacturer's instructions and is in the proper orientation.



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EXHIBIT E-7

REQUEST FOR PROCESSING UNDER 47 C.F.R. SEC.73.215

The transmitter site proposed in this application is short spaced under the provisions of 47 C.F.R. 73.207. The degree of short-spacing is shown in the tabulated channel spacing data included in this section.

It has been determined that the proposed Channel 280A FM facility may be established at the referenced transmitter site without prohibited overlap. The tabulated and plotted data in this exhibit clearly shows that the facility, operating as proposed, will neither create or receive overlap.

As the spacing tabulation indicates, there is one station which is impacted by this proposal. That station is WTTF-FM, Channel 279(B), Tiffin, Ohio. WTTF-FM operates with an effective radiated power of 50 kW. The licensed antenna height above average terrain is 131 meters. For the purpose of this study, the antenna height above average terrain was assumed to be the Class B maximum of 150 meters. The licensed transmitter site of WTTF-FM was used as the study reference.

The map exhibits included in this section show that there would be no prohibited overlap between Westerville as proposed, and the maximum facility contours of WTTF-FM.

Map 1 is a showing done on a scale of about 1:1,000,000. Map 2 is an expansion at a scale of 1:500,000. These exhibits show that the 0.5 mV/m 50/10 contour of WTTF-FM would not overlap the proposed Westerville 1.0 mV/m 50/50 contour. The Westerville 0.25 mV/m 50/10 contour will not overlap the WTTF-FM protected 0.5 mV/m 50/50 contour. The plotted over-



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Additional antenna proposed?

☒ Yes ☐ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.318, including plot(s) and tabulations of the relative field.

Exhibit No.  
E-4

Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)?

☒ Yes ☐ No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 318 mV/m service.

Exhibit No.

12. Will the main studio be within the protected 318 mV/m field strength contour of this proposal?

☒ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125.

Exhibit No.

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207?

☐ Yes ☒ No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply?

☐ Yes ☒ No

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers.

Exhibit No.  
DNA

(d) If the answer to (a) is No and the answer to (b) is No, attach as an Exhibit a statement describing the short spacing(s) and how it or they arose.

Exhibit No.  
Disc.

(e) If authorization pursuant to 47 C.F.R. Section 73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No.  
E-7

- (1) Protected and interfering contours, in all directions (360°), for the proposed operation.
- (2) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as the transmitter location.
- (3) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.
- (4) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.
- (5) The official title(s) of the map(s) used in the exhibit(s).

14. Are there: (a) within 60 meters of the proposed antenna, any proposed or authorized FM or TV transmitters, or any nonbroadcast (except citizens band or amateur) radio stations; or (b) within the blanketing contour, any established commercial or government receiving stations, cable head-end facilities, or populated areas; or (c) within ten (10) kilometers of the proposed antenna, any proposed or authorized FM or TV transmitters which may produce receiver-induced intermodulation interference?

☒ Yes ☐ No

If Yes, attach as an Exhibit a description of any expected, undesired effects of operations and remedial steps to be pursued if necessary, and a statement accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application. (See 47 C.F.R. Sections 73.315(b), 73.318(a) and 73.318.)

Exhibit No.  
A



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